

# Sample Tribal Code:

## Protection for Elders and Vulnerable Adults

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### Section 1. Policy, Purpose, and Enforcement

**A. Policy:** It is the traditional way of the \_\_\_\_\_ Tribe to honor and respect the Tribal Elders. The Elders of the \_\_\_\_\_ Tribe are valuable resources as they are our custodians of tribal history, culture and tradition.



Thus, it is in the best interest of and serves the welfare of the \_\_\_\_\_ Tribe to protect tribal Elders. It is also in the best interest of the Tribe to protect vulnerable tribal members.

**B. Purpose:** The purpose of this Code is to protect Elders and vulnerable adults within the jurisdiction of the \_\_\_\_\_ Tribe from abuse as defined in this Code. This Code shall be liberally interpreted in order to achieve its purpose. This Code provides for:

1. Reporting abuse or neglect to the Tribal Court
2. Receiving reports of and investigating suspected abuse or neglect
3. Delivering Elder protection services and protection services to any other vulnerable adult.

**C. Enforcement:** The \_\_\_\_\_ Tribal Court shall be the primary enforcer of this Code, provided that the \_\_\_\_\_ Tribal Court may enter into agreements with other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.

## **Section 2. Application of this Code**

This Code is civil in nature. This Code applies to Tribal Elders and to any adult tribal member of the \_\_\_\_\_ Tribe should circumstances as defined by this Code warrant. Any section or portion thereof containing the word “Elder” shall be liberally construed to include and mean or other “vulnerable adult” as defined by Section 3 of this Code.

## **Section 3. Definitions**



In this Code the following words shall have these meanings:

**“Abuse”** is intentional or negligent infliction of bodily injury, sexual or emotional abuse, unauthorized and/or improper use of funds, property or other resources of an Elder, neglect, unreasonable confinement, intimidation or cruel punishment of an Elder resulting in physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the Elder such as a spouse, a child, or other relative recognized by the Tribal Council as a caretaker. Abuse is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an Elder by any person, and failing to provide services or resources essential to the Elder’s practice of his customs, traditions, or religion.

**“Elder”** Is a senior citizen of the \_\_\_\_\_ Tribe who is recognized as such by the \_\_\_\_\_ Tribe. **[Whatever the tribal definition of Elder is could be written here.]**

**“Incapacity”** is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

**“Protective Placement”** is the placement of an Elder in a hospital, nursing home, residential care facility, with a different Native family or person in the Village, or transfer of the Elder from one such institution to another with the Elder’s consent or appropriate legal authority.

**“Protective Services”** are services provided to an Elder with the Elder’s consent or with appropriate legal authority and include, but are not limited to, social case



work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other services consistent with this Code. It does not include protective placement.

**“Reporter”** is someone who notifies the \_\_\_\_\_ Tribal Court of a suspected abuse of an Elder or vulnerable adult.

**“Retaliation”** is threatening a reporter of Elder abuse or the reporter’s family in any way, causing bodily harm to the reporter or the reporter’s family, causing the reporter or any of the reporter’s family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter’s or the reporter’s family’s real or personal property in any way.

**“Vulnerable adults”** are those persons over 18 who are mentally or physically incapacitated by physical conditions or by drug or alcohol induced conditions.

#### **Section 4. Duty to Report Abuse of an Elder**

Failure to report cases of suspected abuse or neglect of an Elder or vulnerable adult is a violation against the \_\_\_\_\_ Tribe and subject to fine under Section 6 of this Chapter. The following people are required to report cases of suspected abuse or neglect of an Elder to the \_\_\_\_\_ Tribal social worker or may petition directly to the \_\_\_\_\_ Tribal Court.

1. The Elder’s family or caretaker
2. Any tribal employee including the Tribal Administrator and Tribal Family Youth Specialist and Village Public Safety Officer
3. Any tribal elected official, Council member, or Court Judge



4. Any employee of a tribally owned business, even if not managed by the Tribe.
5. The Village Health Aide.
6. Any medical doctor or dentist, nurse, physicians assistant, human services worker, or Elder service provider.
7. Any person or agency or employee of such agency with a fiduciary duty to the Elder such as a lawyer, accountant, financial institution, property manager, or conservator.
8. Any person who has good reason to suspect that an Elder had been or is being abused or neglected.

### **Section 5. Immunity for Reporting and Confidentiality**

A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person's report. The name of a reporter who reports abuse as required by this Code is confidential and shall not be released to any person unless the reporter consents to the release because it would necessary to protect the Elder. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or for testifying as required by this Code.

### **Section 6. Failure to Report, Bad Faith Reports, and Penalty for Retaliation**

Any person who is required by this Code to report suspected Elder abuse and fails to do so is subject to a fine of up to \$500.00 if found guilty by the \_\_\_\_\_



Tribal Court. Any person who makes a report of suspected Elder abuse knowing it to be false is subject to a fine of up to \$500.00 if found guilty by the \_\_\_\_\_ Tribal Court. If a person retaliates for the reporting of a suspected case of Elder abuse, the \_\_\_\_\_ Tribal Court may utilize the full range of sentencing options at its discretion.

### **Section 7. Procedures for Petition, Investigation, Notice and Hearing**

A determination that abuse of an Elder or Vulnerable adult shall be made only after petition of suspected abuse is filed, an investigation takes place, Notice of a hearing is given to all Parties, a \_\_\_\_\_ Tribal Court hearing is held, and the Court finds proof that is clear and convincing. However, the Court may act in emergency situations to protect the Elder without a petition, investigation, Notice, and hearing when it receives clear and convincing evidence that an Elder is in immediate danger either in writing or orally.

**A. Petition:** The \_\_\_\_\_ Tribal Court shall receive reports of Elder abuse by the filing of a petition and shall assign investigators to work with the reporter within 24 hours. Reporters shall file a petition to the \_\_\_\_\_ Tribal Court containing the following information:

1. The name of the reporter.
2. The name and location of the Elder.
3. The suspected conditions of abuse.
4. Any other facts the petitioner believes will assist the Court.



**A. Investigation:** Investigators, who are appointed the \_\_\_\_\_ Tribal Court, shall gather information and file a report with the Court containing the following information:

1. The Elder's name, address or location, telephone number.
2. The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder.
3. The nature and degree of incapacity of the Elder.
4. The name, address or location, telephone number of witnesses.
5. The name, address or location, telephone number of the Elder's caretaker.
6. A description of the acts which are complained of as abusive.
7. Any other information that the investigators believe might be helpful in establishing abuse.

**B. Notice and Hearing:** Notice and hearing procedures shall be the same for suspected Elder abuse cases as they are for other \_\_\_\_\_ Tribal Court Cases.

**C. Sentencing for Persons who Commit Elder Abuse:** The \_\_\_\_\_ Tribal Court has discretion to impose sentencing on persons who commit Elder abuse depending on the circumstances using the Options for Sentences in the \_\_\_\_\_ Tribal Judicial Code.

## **Section 8. Elder Protective Services and Placements**



**A. Funding of Protective Placements and Services:** Protective services or protective placements shall be provided on either a voluntary or involuntary basis. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the \_\_\_\_\_ Tribal Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.

**B. Voluntary Placements and Protective Services:** Protective services or placements may be provided on a voluntary basis by the \_\_\_\_\_ Tribal Court when requested by any abused Elder and the Court finds the Elder to be in need of such services or placement. The Court shall act on such petitions within 10 days. These services or placements shall be provided in the manner least restrictive to the Elder's liberty and rights consistent with the Elder's welfare and needs. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the \_\_\_\_\_ Tribal Council. The Council shall develop a written plan for the delivery of Elder protection services.

**C. Involuntary Protective Placement and Services:** Upon an Order of the \_\_\_\_\_ Tribal Court, involuntary protective services or placement shall be provided to any Elder who is incapacitated or who is abused.

## **Section 9. Emergencies**

**A. Emergency Action:** The \_\_\_\_\_ Tribal Court may act without going through the process outlined in Section 7 when emergency circumstances exist. The Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon receiving clear and convincing evidence that an Elder:



1. Is at risk of immediate physical harm,
2. is incapacitated and cannot consent to protective services.
3. An emergency exists.

**B. Maximum length of time for Emergency Order:** The emergency protection order shall be issued for a maximum of 20 days and shall specify the emergency services to be provided, by whom the services shall be provided, and any other relevant information to the existing emergency.

**C. Forcible entry:** The \_\_\_\_\_ Tribal Court may authorize a forcible entry to enforce the emergency protection order after attempts to gain voluntary access to the Elder have failed.

## **Section 10. Rights of Elders, Their Families and Caretakers**

Elders and family of Elders have the following rights:

1. An Elder, the Elder's family, and caretakers shall be informed about an Elder abuse investigation before it begins unless an emergency exists.
2. An Elder, the Elder's family, or caretaker may refuse to allow an investigator into their home. In this situation, the investigator may seek a warrant from the \_\_\_\_\_ Tribal Court for forcible entry before entering the home.
3. The Elder, Elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the Elder's situation.



4. The Elder, Elder's family and caretaker have the right, at their own expense, to seek independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the \_\_\_\_\_ Tribal Court if the Elder or caretaker wants the Court to consider such evaluations.

